IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 5836 of 2004

For Approval and Signature:

HON'BLE MR.JUSTICE M.R. SHAH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

TATA FINANCE LTD.

Versus

KAPILABEN, WD/O.DECEASED PRAVINBHAI KESHURBHAI CHAUHAN

Appearance:

1. Special Civil Application No. 5836 of 2004

NANAVATI ASSOCIATES for Petitioner No. 1

MR MTM HAKIM for Respondent No. 1-4

RULE SERVED for Respondent No. 1-4,6,7

DELETED for Respondent No. 5

RULE UNSERVED for Respondent No. 5

MR DAKSHESH MEHTA for Respondent No. 6

CORAM : HON'BLE MR.JUSTICE M.R. SHAH

Date of decision: 02/12/2004

ORAL JUDGEMENT

In this petition under Article 227 of the Constitution of India, the petitioner has challenged the legality and validity of the order passed by the learned Motor Accident Claims Tribunal, Vadodara, dated 1.5.2003

by which the learned Tribunal has allowed the application below Exh. 20 in M.A.C.P. No. 970 of 1993 allowing the original-claimants to join the petitioner financier as opponent No.5.

2. The claim petition came to be filed before the Motor Accident Claims Tribunal (Main), Vadodara, being MACP No. 970 of 1993 and on the basis of the Certificate issued by the R.T.O. authority as it was found that the vehicle in question was hypothecated with the petitioner an application was given to join the petitioner as party-opponent to the claim petition contending inter alia that considering the provisions of the Motor Vehicles Act, 1988, more particularly Section 2(30) of the Act the petitioner is the owner of the vehicle in question and as the said application is allowed the present Special Civil Application is filed.

3. Shri Chudgar, learned advocate appearing for the petitioner has submitted that the learned Tribunal has misinterpreted the provisions more particularly Section 2(30) of Act and has submitted that merely because the vehicle was hypothecated with the petitioner without there being any further evidence with regard to possession the petitioner could not have been considered as owner as envisaged under Section 2(30) of the Act and therefore requested to allow the present Special Civil Application.

4. Shri MTM Hakim, learned advocate appears on behalf of original-claimants. It is submitted that the question with regard to the vehicle in question with regard to possession of the petitioner or not is required to be considered on adducing the evidence and therefore merely because the petitioner is joined as the party-opponent it will not be treated that the petitioner is the owner and an appropriate order can be passed by the Tribunal after considering the evidence on record. He has also further submitted that the present Special Civil Application is required to be dismissed on the ground of delay and latches and on the ground that in fact the petitioner has acquiescence with the order. He has relied upon the Rojkam and has submitted that the order came to be passed on 1.5.2003 by which the applicant was directed to be joined as party-opponent No.5. The matter was adjourned time and again. The petitioner appeared through Advocate and even they had submitted applications for adjournment time and again. Subsequently even the claim petition was amended and the claim was enhanced and even after also the learned advocate appearing for the petitioner sought time to file

reply to the amended claim petition. He has also further submitted that the evidence from the claimant side as well as opponent side is already over and at the time when the final order was to be passed by the learned Tribunal the petitioner approached this Court and therefore requested to dismiss the present Special Civil Application.

5. It is an admitted position that the order came to be passed on 1.5.2003. The petitioner appeared before the Tribunal and engaged and advocate. The learned advocate appearing for the petitioner sought adjournments time and again to file reply to the claim petition. It is also an admitted position that subsequently the claim petition was amended and the learned advocate appearing on behalf of the petitioner sought time to file reply to the amended petition also. It is also an admitted position that the evidence on behalf of the parties was already over and the matter was at the stage of conclusion of proceedings/arguments, and at that stage after a period of one year of the passing of the order the petitioner has preferred the present Special Civil Application. Considering the aforesaid facts and circumstances of the case, the present Special Civil Application cannot be entertained. It is evident that in the application given by the original-claimants below Exh. 20 there was no reference to possession of the vehicle. It is the contention on behalf of the petitioner that considering Section 2(30) of the Act if the vehicle is under a hire purchase agreement or other agreement, then the person in possession of the vehicle under that agreement can be considered to be the owner of the vehicle in question. The question with regard to possession is required to be considered on the basis of the evidence led before the Tribunal. Merely because the peititoner is joined as a party-opponent, only on that basis it will not be construed that the petitioner is the owner of the vehicle in question. The same is required to be considered keeping in view the provsions of Section 2(30) of the Act and on the basis of the evidence adduced by the parties.

6. With these observations, the present Special Civil Application is dismissed. Rule is discharged. Ad-interim relief, if any, shall stand vacated.

[M.R. Shah, J.]

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